

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

<b>IN THE MATTER OF:</b>  <b>PETITION FOR RATE INCREASE BY FOURWINDS RESORT AND MARINA</b>	) ) ) ) )	<b>ADMINISTRATIVE CAUSE NUMBER: 09-093P</b>
--	-----------------------	---

**REPORT OF HEARING OFFICER, INCLUDING FINDINGS  
AND PROPOSAL TO THE NATURAL RESOURCES COMMISSION  
AS TO ITS RECOMMENDATIONS TO THE U.S. ARMY CORPS ENGINEERS**

**1. PETITION FOR RATE INCREASE BY FOURWINDS RESORT AND MARINA**

Jeffrey G. Hammond, General Manager of Fourwinds Resort & Marina (*Fourwinds*) filed a petition dated April 1, 2009 with the Division of State Parks and Reservoirs of the Department of Natural Resources (*Department*) seeking a rate increase for its facilities operated on Monroe Lake. The petition was forwarded to the Natural Resources Commission (*Commission*) and filed on April 28, 2009. Fourwinds' petition seeks a five percent (5%) across the board increase in rates for all slips and EZ-Ports. Mr. Hammond provided a statement of justification for the sought rate increase as well as a spreadsheet containing rates charged for slips by 20 other marinas.

**2. SCOPE OF REVIEW**

Fourwinds' petition is governed by a nonrule policy document approved by the Commission as Information Bulletin #20 (Second Amendment) (<http://www.ai.org/nrc/policy/marinara.html>), and published on the INDIANA REGISTER database website as 20090121-IR-312090045NRA. The Commission reflected that the purpose of the document was to implement an informal process for the review of ratemaking recommendations for resorts and marinas under lease with the Department.

According to the nonrule policy document, a lessee desiring a rate establishment or increase shall submit its request to the Department, in accordance with the existing lease agreement, by April 1 of the year preceding the year in which the lessee expects to implement the rate. Upon receiving a request, the Department informs the Division of Hearings of the Commission (*Hearings Division*). The Hearings Division assigns a cause number and, in consultation with the Department, selects the date and time for a rate hearing to be held in Indianapolis. The Department advises the lessee of the date, time, and location in Indianapolis of the rate hearing, at which time the lessee and affected persons may provide comments to a Commission hearing officer.

Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate request are to be available for the public to review at the lessee's business office, during normal business hours. The lessee shall provide notice of the proposed rate petition to each slip or buoy renter. A copy is also to be made available for the public to review at the Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, Indiana, 46204. Affected persons may send written comments concerning the proposed rates to the Commission's Division of Hearings. In accordance with the existing lease agreements, the Department is to analyze comparable facilities to compare rates with those sought by the lessee. Information used in the analysis is to be available for inspection at the Division of State Parks and Reservoirs office in Indianapolis.

Any person may attend the rate hearing and provide oral or written statements. The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The Administrative Orders and Procedures Act (IC 4-21.5) does not apply, but the hearing officer is delegated full authority by the Commission to implement IC 14-11-1-3, and to make any orders reasonable in implementing the purpose of the nonrule policy document. The lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the Department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request.

Following the completion of the review, the hearing officer is to prepare a written report to the Commission. The report is to include written findings with respect to the requested rates and a proposal to the Commission with respect to recommendations to the U. S. Army Corps of Engineers. The hearing officer shall also forward a copy of the report to the lessee, the Department, and any other person who requests a copy.

The hearing officer is to present the findings and recommendations to the Commission during a meeting to be held in August or September. During that meeting, the Commission will either recommend approval of the rates, disapproval of the rates, or approval of a rate in an amount less than requested by the lessee. Recommendation for favorable consideration of a rate will not be withheld unless, in the opinion of the Commission, fees submitted exceed fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

### **3. PUBLIC HEARING AND WRITTEN COMMENTS**

Fourwinds provided the requisite notice of its petition to slip and buoy renters. The notice provides details of the proposed rate increases and announced the ability of individuals to provide comments at a public hearing scheduled for July 7, 2009. Comments were received during the hearing as follows:

#### **A. Petitioner at Public Hearing**

**Jeffrey Hammond, Fourwinds Marina**

Mr. Hammond explained that the comparable list that he submitted in conjunction with Fourwinds Marina's Petition included marinas that had been identified by Fourwinds and marinas identified by the Department during the review of Fourwinds 2007 rate petition. Mr. Hammond acknowledged that he was not familiar with all of the marinas on the list.

The hearing officer inquired of Mr. Hammond which of the marinas included on the comparables list was the most similar to Fourwinds Marina in terms of amenities, facilities and services. Mr. Hammond stated that the most similar marina in the region was probably Jamestown Marina<sup>1</sup>, which was not on the listing he provided in conjunction with Fourwinds Marina's petition. The hearing officer requested that Mr. Hammond provide comparables associated with Jamestown Marina, if at all possible. Mr. Hammond indicated that he had Jamestown Marina's rates for last year but was uncertain whether they had changed since that time.

Mr. Hammond provided a rate listing for Jamestown Marina by email received July 7, 2009 at 4:10 p.m. stating, "Jamestown told me that these are their 2009 rates and that they expect a 2-5% increase in 2010. They are basically waiting like we are to see what happens with the economy before committing to an increase amount. Regardless, their minimum increase should be 2% for next year."

Mr. Hammond also explained that another variable to take into consideration is whether individual boaters are interested in the services and amenities available at the marina. The hearing officer explained to all in attendance that the focus on the comparison of rates pertains to the marina property, the services, facilities and amenities offered. While boaters' preferences might play a role in the rates sought by an individual marina, the comparison of rates between comparable facilities does not involve boaters' interest in or use of the facilities, amenities and services provided.

With respect to the petition for increase there's the underlying issue that we don't know what increase we will put forth. The economy right now is unknown and right now our goal is too keep improving the marina. There's been a tremendous amount of money invested in the facility since the summer of 2002. Mr. Hammond acknowledged that last year there was a lull in the construction or property improvement because of a pending sale of the marina that did not ultimately materialize. The investment in the facility has financially exceeded the profits gleaned from the marina. Investments have been developmental, involved the replacement of items that needed replaced and superstructure improvements including power-grid enhancements and parking improvements, walkways, bridges, etc.

Mr. Hammond stated that he worked for the facility for three (3) years before Traina Enterprises, the current owner, purchased it and during that time the marina was owned by a hotel company who happened to own a marina. During that time the marina did not get much attention. Traina Enterprises is a marina company that happens to own a hotel.

---

<sup>1</sup> Jamestown Marina is not the same as Jamestown's State Dock, which was included on the original comparables list provided by Fourwinds Marina.

There is now a property plan that was developed before Traina Enterprises purchased the marina. At that time there were approximately 850 slips and now there are 940 slips. Of the 940 current slips approximately 850 are rented. The hotel, which has approximately 100 rooms is only 30% rented. Clearly the development plan calls for the marina to receive most of the attention and financial resources.

The construction being undertaken this year will eliminate the last of the old “not in good shape at all” covered docks. Presently there are 200 slips being constructed and when complete the total slip count will increase by a maximum of 40 to 50 slips. Some of the slip construction is being financially augmented by insurance proceeds received as a result of some winter storm damage. The insurance proceeds, however, would only cover repairs and it was Fourwinds’ decision to spend that money on a complete replacement of the docks instead of repairing the existing one that was damaged. Plans for hotel development are “literally on hold until we get the marina materially reconstructed... and we will be fundamentally there by sometime late next year.”

Right now, in addition to the construction of the new slips, a project is underway to shift a “significant power increase over to the peninsula area of the property where the superdock is right now, where the 72’ and 90’ superdock slips are. We’re extending a walkway...we’re building several hundreds of feet of walkway there and putting ...all this construction is occurring as we speak on the property... and we’re putting the new docks oriented off of that walkway. What that will do is effectively alleviate nearly 300 slips worth of parking pressure off of the main lots in front of the facility and move that parking pressure” to a different lot. Mr. Hammond stated that these facility modifications will likely prove to be the single biggest parking improvement made since 2002.

Mr. Hammond stated that the improvements occurring now were, in part, facilitated by the marina’s \$950,000.00 expenditure to move the State’s boat ramp a few years ago. The present orientation of the docks would have rendered that 40 year old boat ramp useless to the public so that had to be addressed before the docks could be configured as is presently being done.

We have no idea what the economy is going to look like. What we want to be able to do is to recoup some of the capital dollars being spent and pay debt service while still making a profit. However, if an increase is approved and “we come around to the end of the year and the economy is no better than it is it’s not in our best interest to chase off our customers.” Mr. Hammond acknowledged that boating is a “luxury hobby” and can be given up so it may be necessary not to charge the increase in order to “avoid chasing away our customers.”

Mr. Hammond stated that Fourwinds’ slips are approximately 90% rented. He elaborated that there was a “substantial drop-off” on J Dock, which is the dock that was the most heavily damaged in the winter storm. J Dock is also a largely seasonal dock, which has the types of slips that are being given up due to economic concerns. According to Mr. Hammond, seasonal slip renters are now trailering their boats to the lakes more instead of renting slips for convenience.

**Gary Miller, Department's Assistant Director of Inns and Concessions**

Gary Miller stated that some of the comparable facilities offered by Fourwinds are small marinas that do not have a lot of amenities. Those include Patoka Lake Marina, Hoosier Hills Marina, the State Dock at Jamestown and Eddy Creek. There is also one coastal marina, Ventura West Marina, included that is not a truly comparable facility. Mr. Miller stated that Kent's Marina is close in terms of similarity having 24 lodging units, a swimming pool, restaurant, 400 slips, a small floating store, boat rentals (not houseboats), and golf course.

**B. Affected Persons at Public Hearing**

**Jack Baynes, Hendricks County, Indiana**

When you put an 8' patio in a 48' slip you no longer have a 48' slip, you have a 40' slip. Fourwinds is charging annual rent for a 48' slip and then they also charge annual rent for the 8' patio. Mr. Baynes stated that the patio is an item he requested to be added to his slip. He also stated his belief that the patio should be a one time fee and the annual rent should be on a 48' slip. Alternatively, Fourwinds should charge rent only for a 40' slip plus the rental fee for the patio.

According to Mr. Baynes most marinas charge a one time fee for the patio.

Mr. Baynes stated his desire to have Kentucky Lake Marina and Green River Marina included as comparables.

Mr. Baynes acknowledged Mr. Hammond's addressing of parking issues but explained that the lower parking area is full of boats that need moved. He explained that the parking situation over the Fourth of July weekend was "a disaster" and if the boats in the lower lot were moved there would plenty of parking spaces.

He also noted that during the winter storm the boats were holding up G dock, which in his opinion indicated a lack of adequate floatation on the dock. He stated that his boat sustained damage as a result of the storm because it was helping to hold up the dock.

Mr. Baynes was invited to submit cost comparables from Kentucky Lake and/or Green River if he could obtain those.<sup>2</sup>

**Sandy Jones, Indianapolis, Indiana**

One of her concerns is the same as what Mr. Baynes raised about the patios. She explained that she had friends who rented slips at what used to be Dan's Marina on the Ohio River. These friends reported to her that these marinas provided the frames and the floatation and required the slip holder to use specified material for construction but the

---

<sup>2</sup> Rates from Kentucky Lake and Green River were not received for comparison purposes.

patios were acquired for a one time cost. Ms. Jones also reported that Cutright Marina on Monroe Reservoir operates in the same manner as Dan's Marina.

Ms. Jones stated that she understands the rate increases, but the patio rental she does not understand. She explained that she intends to be at Fourwinds for another 10 years, and that over that period of time she will pay \$4,000.00 for the rental of a patio. "To continue to pay for a full 48 length and then the [patio] rental every year.... I just can't quite grasp the fairness of that."

Ms. Jones also had a question of Mr. Hammond regarding the configuration and orientation of the new J dock that is being constructed. Ms. Jones, Mr. Hammond and Mr. Miller discussed this issue for a period of time but all involved in the discussion acknowledged that this discussion had no impact or bearing upon the rate petition filed by Fourwinds. Consequently, the content of this discussion has been omitted from this report.

### **C. Response of Petitioner to Affected Persons Comments at Public Hearing**

#### **Jeffrey Hammond, Fourwinds Marina**

In response to Mr. Baynes' and Ms. Jones' comments Mr. Hammond explained that prior to Traina Enterprises purchase of Fourwinds Marina, the renters were allowed to build what they wanted in terms of patios. Mr. Hammond acknowledged that some of them were beautiful but others were not only unsightly but were unsafe. Marina patrons were also allowed to have refrigerators, ice machines and other appliance type items on the walkways as well as run their own electrical wiring. Mr. Hammond advised that out of safety concerns and for other reasons Fourwinds was ordered by the US Army Corps of Engineers to prohibit these practices.

Since that time, Fourwinds has rented the patios on request. By renting the patios Fourwinds can insure that they are installed correctly and safely, provide for uniform maintenance and for replacement as necessary. By renting the patios, Fourwinds eliminated the need to monitor a slip holder's maintenance of a patio owned by the slip holder or the potential to have to order unsightly or unsafe patios to be repaired or removed. If a slip renter does not want a patio they are not obligated to rent one. Mr. Hammond stated that it varies from marina to marina whether a slip holder is charged a one time fee or required to pay annual rent for a patio.

Mr. Hammond acknowledged that the lower parking lot is being used for boat storage. The lot should accommodate approximately 80 cars but will presently accommodate maybe 20 because it is being used a storage for abandoned boats. Mr. Hammond explained that the process of getting rid of abandoned boats is not as easy as relieving yourself of an abandoned car. However, Fourwinds is working through the process of getting rid of the abandoned boats and several are to be auctioned in or near March, 2010. He further advised that the lower parking lot is the lot furthest from the marina and the boats have been stored there in order to keep the lots closest to the marina open for use.

Mr. Hammond assured the hearing officer that Fourwinds is not storing boats in the parking lots for a fee except in the winter season when the lots are not heavily used for parking.

Mr. Hammond expressed his intent to obtain and submit the comparables for Kentucky Lake and Green River as requested by Mr. Baynes, if possible, but expressed concern that he would not be able to obtain that information before the close of the public comment period on July 7, 2009. The hearing officer asked that he make the attempt but expressed her understanding that obtaining the information on such short notice might be difficult.

**D. Affected Persons' Written Comments<sup>3</sup>**

**Mark E. Davis, Bloomington, Indiana**

Why would you even consider this proposal? I represent the average American worker, that chooses to stay local, to enjoy my "Recreation Dollars". How dare you consider this preposterous, self concerning ploy to have us pay for your vendors expansion and exploitation of our dollars. We are not stockholders or investors. Please remember this as you consider this issue.

**Glenn Duthie, Boggstown, Indiana**

We appreciate your ongoing attention to this matter. Slip rates and the upcoming meeting is the hot topic of conversation at the marina. It is my opinion that your recommendation of approving increases from the last approved rate schedule in 2002, is the most appropriate course of action. Approving a rate increase on non approved rates, 2003 - 2007, does not make sense. Although the slips have been improved (due to damage, neglect and age), the overall services provided have steadily decreased over the years. The trend continues: Increase the rate, decrease the service.

In fact due to the closing of the hotel last year, we have not had any amenities available for most of this season. To call this marina a resort is ludicrous - there are no "resort" amenities available. Even basic services are below expectation. There is no security to assure our property is protected against theft and other losses. For the majority of this season the swimming pool was not available, and once it did open, there was not heated, there were no public restrooms. The shower house, which we pay an additional \$75 fee for access is filthy with broken or nonoperational toilets, showers or sinks. Additionally, parking is still a problem and on any given weekend, there are no parking spots available even on the hotel side.

---

<sup>3</sup> One comment dated June 14, 2009 and filed June 15, 2009 was received by U.S. Mail signed "Name Withheld." The envelope noted no return address so no attempt was possible to identify the writer. Under the authority of Information Bulletin #55 (First Amendment), this comment was not considered and is not included within this report

In reference to the 2008, rates we are being charged, we have calculated that our slip on E Dock computes out to be \$133 per foot. Compare this to the 2008 rates for the new "super" dock with private patios, charging \$124 per foot, and you can see our concern. Why are we being charged so much more per foot with no patio than the brand new super dock?

Unfortunately, I will be out of town the day of the meeting and will be unable to attend, I wanted to take this opportunity to provide you with my and my family's concerns. We appreciate your time, effort and consideration.

**Dan Doan, Bloomington, Indiana**

To propose an increase to rental rates in this economy is arrogant and bold of the owners. My family, and I have heard the same from other families, will not renew our rental agreement going forward if this rental increase is allowed.

**Doug & Sandi Kidwell, Brownstown, IN**

While I have "compassion" for the fact that "cost of doing business" continues to rise, I find it difficult to swallow that this company has spent more than \$10,500,000 on this facility. If this is true then I would recommend they find someone more responsible to handle their money expenditures.

We have had our boat in the "less expensive" area (docks A - B & C) of the marina for about four years now and I have seen absolutely no repairs or upgrades to our area. We pay about \$1600 for the months of April to September and this would indeed seem to be all profit since there is no outgo. Now - in all fairness I will say that they did replace part of the roof that was blown away -- however, I would assume they had insurance for this.

The hotel section was so poorly maintained that a couple of years ago when I went to check it out to see about putting guests there it was apparent no one would want to stay there. It was shoddy looking and smelled.

I know that several persons who also rent slips in our area are talking about going to the Corps of Engineers and thus the DNR to make formal complaints about the general management and upkeep of this beautiful resource.

We are retired and on a fixed income; however, we want to continue to use our pontoon boat as long as possible because this is such a lovely natural setting. But - like everything else - if the rental continues to raise we will have no choice. My husband is disabled so we must make use of a slip from which to launch our boat.

Like most others - if I actually saw improvements could look at another cost increase with not so much bitter taste -

Thank you for listening to our position on this matter.

**Joe Dubord, Indianapolis, IN**

Below are some points to consider while making the decision to allow Fourwinds Resort and Marina (TEI) to increase slip rates in the future:

When TEI states that they have invested \$10,500,000 into the facility, what portion of these dollars was received from Insurance claims for storm damage and repairs versus their own capital?

The hotel and restaurant on the property, which includes a pool, are all part of the boater experience and directly relate to the slip fees charged to boaters. This portion of the property continues to significantly decay and was not available for use by visiting boaters, families, and guests last year. Little to no money has been invested recently in bringing the property up to an acceptable standard. Only 10 rooms have been remodeled in the past 5 years to my knowledge. The main restaurant is in very poor condition as well as the main lobby, entrance, parking lot, tennis courts, miniature golf (eye sore) etc.....

Security at the marina seems to have been cancelled. Prior year slip fees included a roaming security guard several times per night. I would question whether this contract is in place presently. Summer weekends consist of many intoxicated people around the hotel bar area and then leaving in automobiles. No visible security in the area to control activity. Last summer, our child had a medical emergency which required attention at a Bloomington Hospital. We awoke from our boat and proceeded to our vehicle at 3:30am only to find a drunk person passed out and laying in the middle of the parking lot next to our car.

Our personal automobile has been hit twice in the past two years due to sub-par parking arrangements.

While the actual dock slips have been kept in good order, ie planks, water, electrical, we feel the owners need to be questioned as to their plans for the entire property. They have issued emails to slip renters stating many improvements are in the works, however, these statements usually come out just prior to annual billings and little follow through or accountability occurs.

We appreciate the on site management staff of the marina and we greatly appreciate the actual property. However, we would like to see more accountability with the ownership of the entire property. A possible recommendation would be for the State of Indiana to take over the hotel and parking portions of the property and build a new State run lodge. Maybe Federal Stimulus money could be used for a portion of this project. I would encourage you to visit the property and compare existing slip rates to the value boaters receive when compared to other similar arrangements in the mid-west, ie Kentucky, Barkley, etc...

The most important consideration would be is TEI acting as the best "steward" of this State owned land?

Thank you for your time and consideration with this important decision.

**Patrick A. Pickett, Fishers, IN**

I have rented a slip at the Fourwinds Marina for the past 5 years and recently received information about a possible rate increase. I'm opposed to this. When we first started going to the Fourwinds it seemed like every slip was used. That is not the case now, many empty slips. I think any rate increase will lead to many more empty slips. The economy is just not good enough to handle this. I know in my situation I would seriously consider doing something else if an increase happens.

Thank you.

**Colleen & Dan Moran, Jamestown, IN**

I respectfully write to you regarding the Fourwinds Resort & Marina's proposed boat slip increase that comes before you July 7, 2009, at 9:30 am. While we enjoy having our boat moored at Fourwinds, it is difficult to accept the proposed slip increase for 2010-2011. For us the "small slip increase" listed in the May 28, 2009 correspondence would be \$274.64 over the current yearly fee of \$5492.76. That amounts to a 5% increase.

As you know, at the recent conclusion of the General Assembly's Special Session, no agency under the State's umbrella increased operating expenses by 5% throughout the biennium. While several improvements have indeed been made at the marina, most appear to have been made as the result of two major weather-related incidents in which the marina's insurance has funded the improvements.

In these "uncertain" economic times, slip rental is not the only increase that Hoosier boaters incur. Fuel, insurance, maintenance, and now access to the boats have all increased. This was the first year that boaters had to also pay for entrance into the Fairfax State Recreation Area. While we have no difficulty supporting our State's parks, it seems a bit odd to have to pay for access to our own boat after we pay an annual boat launch fee.

It is also important to note a mini comparability study. The following list compares our fee for a 42' slip with metered electric and water with a current annual fee of \$5493 to a few marinas throughout Indiana and surrounding states, with sources cited.

Hammond Port Authority - 50' Double 50 amp \$4,841.00 - includes dock box, water and electric

Source: <http://www.hammondmarina.com/Marina/Rates.htm>

Michigan City Port Authority - 45' slip with water & electric \$3535

Source: <http://www.emichigancity.com/cityhall/departments/port/slipfees.htm>

Kent's Harbor Marina (Brookville, IN) - 40' Slip Length \$3,175 with metered power and water

Source: <http://www.kentsharbor.com/marina.shtm>

Patoka Lake Marina - 40' x 16' Covered with water/electric \$3925

Source: <http://www.patokalakemarina.com/docks.htm#map>

Eddy Creek Marina (Eddyville, KY) - 44' covered slip \$3975 with metered electric, water, unlimited wireless Internet

Source: <http://www.eddycreek.com/moorage.htm>

Taylorsville Lake Marina (Taylorsville, KY) - Boats 40' to 50' \$3100 with metered electric and water

Source: <http://www.taylorsvillelakemarina.com/moorage.html>

Harbor Isle Resort & Marina (St. Joseph, MI) - 45' River Slips \$ 3,200 with facilities, electric, and water at no additional cost

Source: <http://www.harborislemarina.com/slips.php>

As you can see Fourwinds already has the highest slip rental in the area. Therefore, it would be difficult to justify an increase at this time.

Again, we enjoy having our boat at Fourwinds. The current staff is working hard to make improvements. However, it seems as though this proposed increase is not aligned with other annual slip rates within Indiana and adjacent states.

**Dianne Porter, Bloomington, IN**

Thank you for taking my comments pertaining to the rate increase at the Fourwinds Marina!

I would like to attend the meeting, but I am in fear of being asked to leave or not allowed to renew my lease next year! This happened to my dear friends Cheryl and George Moore! And because of my friendship with them, I am not in good standing with Mr. Hammond. There are so many boaters who feel the same to the extent that they cannot even email their comments.

I enjoy boating at Lake Monroe but it has surpassed what an average income can afford. It is sad to see that recreation on a government owned lake has become affordable only for the wealthy and not for an average family! I choose to spend my vocational dollars in Indiana because I love this state and wish to support it economically! I would like to see money go to supporting the well being of Lake Monroe, but the Fourwinds wishes to make more and more profits at the expense of losing more and more support from the people who live in Indiana that boat there!

I wish to have your support in not increasing our slip fees so that we can continue to afford our boating experience at Lake Monroe!

**B. Warren**<sup>4</sup>

The written comment received by first class mail is attached as Exhibit A.

**4. RECOMMENDATION BY THE DNR DIVISION OF PARKS AND RESERVOIRS**

As anticipated in the nonrule policy document, the Division of State Parks and Reservoirs has completed a comparative review of slip rates for Fourwinds. Gary Miller, Assistant Director of Inns and Concessions, prepared a spreadsheet summarizing his analysis by highlighting rates lower than Fourwinds' in red and rates higher than Fourwinds' in yellow. The referenced spreadsheet is attached as Exhibit B.

**5. FINDINGS AND PROPOSAL BY THE COMMISSION'S DIVISION OF HEARINGS**

**A. Findings**

The scope of the review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20, which specifies that the lessee "shall include justification for the request along with comparable rates from other marinas." Information Bulletin #20 proceeds to specify that "the department will analyze comparable facilities to compare rates with those sought by the lessee."

The Commission's role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U.S. Army Corps of Engineers, which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the U.S. Army Corps of Engineers, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the "lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing" in preparing a report and proposed recommendation for Commission consideration.

---

<sup>4</sup> The comment failed to identify the city, county or state of residence of the writer within the body of the letter. The writer provides his/her name and indicates within the body of the letter that he/she is a dock renter at Fourwinds. The envelope containing the comment had been discarded before Commission staff realized that the residence location was not otherwise noted. Strict adherence to the letter of Information Bulletin #55 (First Amendment), would prevent the hearing officer from considering this comment. However, there appears to be no intent on behalf of the writer to withhold his/her residence information and it is assumed that the envelope would have provided the required residence information. Based upon these particular circumstances and considerations, the hearing officer has exercised her discretion to include this letter within the report and consider its content despite the lacking residence information.

The Commission, through its adoption of Information Bulletin #20 established as fundamental to a determination of the appropriateness of a proposed rate the consideration of rates charged by comparable marinas. The comparison therefore requires identification of marinas comparable to Fourwinds. In addition to the marina facility, Fourwinds includes a resort hotel that provides a dining room and lounge as well as a swimming pool and tennis courts among other amenities. Kent's Harbor (*Kent's*), a marina operated on Brookville Lake, also provides an on site resort, café, harbor bar and access to a golf club. Hammond Marina (*Hammond*) offers banquet facilities, a lighted promenade as well as casino access including restaurants overlooking Lake Michigan. During the public hearing Mr. Hammond stated that Fourwinds is most closely comparable to Jamestown Marina (*Jamestown*), located in Jamestown, Kentucky.

Mr. Miller noted during the public hearing that some of the marinas identified on Fourwinds' spreadsheet of comparable facilities are actually small marinas that do not provide the amenities or facilities that Fourwinds provides. Mr. Miller identified those marinas as being Patoka Lake, Hoosier Hills, Eddy Creek and the State Dock at Jamestown. Mr. Miller also noted that Ventura West Marina is a coastal marina and as such is equally not a true comparable for Fourwinds. Mr. Miller agreed that Kent's Marina is similar in terms of facilities and amenities.

Based upon input from Mr. Hammond and Mr. Miller regarding the comparison of facilities, the hearing officer has not considered the rates associated with Patoka Lake, Hoosier Hills, Eddy Creek, the State Dock at Jamestown or Ventura West Marina as being true comparables. The hearing officer has considered the remainder of the facilities identified by Mr. Hammond but has placed greater emphasis upon the comparison of Fourwinds to Kent's, Hammond and Jamestown. In comparing Fourwinds' rates with Jamestown, Hammond and other out-of-state marinas the hearing officer has focused on Fourwinds' current rates because there is no means of estimating whether and to what extent these marinas may increase their rates in 2010. Kent's falls under the authority of Information Bulletin #20 (Second Amendment) and the hearing officer is aware that no rate increase has been sought, therefore Kent's current rates, which will also apply throughout 2010, have been compared to Fourwinds proposed rates.

General Comparison:

The rates charged by Jayhawk Marina (Hillsdale Lake, KS), Sunset Marina & Resort (Dale Hollow, TN), Starboard Cove Marina (Flowery Branch, GA) and Grandpapy Point Resort & Marina (Denison, TX) are lower across the board than the current rates charged by Fourwinds. The rates charged by four (4) marinas, Delaware State Park Marina (Rehoboth, DE), Duffy Creek Marina (Georgetown, MD), Mears Point Marina (Grasonville, MD) and Oselka Marina (New Buffalo, MI) were consistently higher than the current rates charged by Fourwinds. In considering the rates of Waukegan Harbor (Waukegan, IL), McKinley Marina (Milwaukee, WI) and Bald Knob Marina (Johnsburg, IL) the hearing officer determined that the rates being charged were less than Fourwinds' rates but the rates were for seasonal slips whereas Fourwinds' rates were annual rates. Taking into consideration the seasonal nature of these rates, they appear generally consistent with Fourwinds' annual rates.

Comparison to Jamestown:

A comparison to Jamestown is complicated, particularly for the shorter slips, by the fact that it has slips of only 20', 26', 40', 50' and 70' whereas Fourwinds maintains slips that increase in two foot to four foot increments from 18' to 54'. Fourwinds also maintains slips of 60', 72', 76' and 90'. However, a comparison of Fourwinds' to Jamestown's rates is not impossible. Fourwinds 20' slips are all seasonal while Jamestown's 20' slips are full year rates and Jamestown has only open 20' slips. Jamestown's full year rates for 20' open slips as compared to Fourwinds' 20' open slip seasonal rates reveals that Fourwinds' rate is up to \$120.00 more than Jamestown's lower rate and up to \$1,479.60 less than Jamestown's most expensive rate.

Except for a few slip sizes, Fourwinds' current rates are generally higher than Jamestown's current rates. Fourwinds' current annual rates for a 36' open slip are \$3,150.00, \$3,357.00, \$3,565.38 and \$3,778.00 while Jamestown charges only \$3,595.00 for an open 40' slip. Presently, Fourwinds' rates for one of its 36' slips categories is higher than Jamestown's rate for its four foot (4') longer slip and for two other categories of 36' slips, Fourwinds' rate is only slightly less than Jamestown's 40' slip rate. Fourwinds presently charges an annual rate of \$4,078.62 for a 46' open slip and proposes an increase in that rate to \$4,282.55 while Jamestown charges only \$3895.00 for a slip of this exact size and type. Fourwinds bills \$6,277.32 annually for a 48' covered slip while a two foot longer slip at Jamestown rents for only \$6,195.00 annually. Fifty foot open slips are presently rented at Fourwinds for either \$4,275.18 or \$4,750.20 while Jamestown presently rents this same size and type of slip for \$4,495.00.

In some instances Fourwinds' rates are not higher than Jamestown's rates. Fourwinds 42' open slips are currently billed annual rates of \$3,549.00, \$3,838.38, \$4,389.27. It would be expected that a 42' open slip rate would be slightly higher than Jamestown's rate for a two foot shorter, or 40' open slip, and in this size category Fourwinds rates do not appear out of line. A comparison of Jamestown's 40' covered slip to Fourwinds' 42' covered slip reveals that Fourwinds charges only \$472.40 more for a two foot longer covered slip and this too is not a significant disparity. Furthermore, Jamestown charges \$9,395.00 for a 70' covered slip while Fourwinds presently charges only \$20.98 more for a two foot longer covered slip and proposes a rate for its 72' covered slip that is only \$491.00 more than Jamestown's present rate for its 70' slip.

Comparison to Kent's Harbor:

Kent's and Fourwinds share only four (4) slip sizes, 20', 26' 36' and 50', that are the same between the two marinas. An evaluation of rates relating to those sizes of slips reveals that with the exception of the 20' slips, Fourwinds' rates are currently higher than Kent's rates and its proposed rates would increase the disparity between these two marinas' rates.

Both Fourwinds' present and proposed rate for its 20' open seasonal slips remain less than Kent's rate of \$1,595.00. In all other respects Fourwinds' current rates are higher than Kent's rates for same sized slips. Fourwinds' proposed rates would be \$65.15 or

\$108.93 higher for 26' open slips, depending upon category. Thirty-six foot slips would rent at Fourwinds for \$442.94, \$660.80, \$878.65 or \$1,102.24 more than Kent's, depending upon category. Under its proposed rates and dependant upon category, Fourwinds could charge either \$873.94 or \$1,372.21 more than Kent's for 50' open slips.

Comparison to Hammond Marina:

Fourwinds maintains three (3) categories of slips that are also maintained by Hammond Marina. Fourwinds' current rates are lower by \$188.00 for one category of 50' slips and \$90.80 lower for another category of 50' slips. With respect to rates for its 60' slips, Fourwinds current rate is \$82.24 higher. The differential in the rates as compared between these two marina is not notable.

Discussion:

In general terms, Fourwinds rates are consistent with or higher than rates charged by the majority of the marinas identified as having comparable facilities. The marinas identified as having rates consistently higher than Fourwinds are located in Maryland and Delaware, not in the Midwestern part of the United States.

More specifically, however, a comparison of Fourwinds' rates with the three marinas that were considered to be most similar to Fourwinds in terms of facilities and amenities reveal that Fourwinds' rates are presently consistent with the rates of those marinas. Because Kent's is a marina subject to the requirements of Information Bulletin #20 and it did not petition for an increase of rates, it is certain that Kent's rates for 2010 will be unchanged from current rates, some of which are significantly lower than some of Fourwinds' rates. Because Jamestown and Hammond are not subject to Information Bulletin #20 it is possible that these marinas could raise rates for the 2010 boating season.

While it is possible, there is no indication in the record that Hammond actually anticipates any type of increase in rates for 2010. For the sizes of slips at Hammond that are consistent with certain slip sizes and categories maintained at Fourwinds, Hammond's current rates are generally consistent although slightly higher than Fourwinds' current rates. While an increase of rates at Hammond would increase the differential in rates between Hammond and Fourwinds for 50' and 60' slips, that potential result is not determinative of Fourwinds petition, particularly with respect to the numerous additional sizes and categories of slips maintained by Fourwinds.

Mr. Hammond reflected that Jamestown plans a potential rate increase of two – five percent (2 – 5%) for the 2010 season. However, with respect to many slip sizes and categories Jamestown's current rates are lower than Fourwinds current rates and a 2 – 5% increase would bring many of those rates to equality with Fourwinds' current rates. For example, a 2 – 5% increase in Jamestown's rate for a 46' open slip would bring that rate to between \$3,972.90 - \$4,089.75 as compared to Fourwinds' current rate of \$4,078.62 that it proposes to increase up to \$4,282.55.

The hearing office acknowledges that Fourwinds has made significant improvements to the marina in the years since 2001, when it acquired the marina property. The hearing

officer does not dispute that these improvements have involved a tremendous investment of financial resources and that future plans, as highlighted by Mr. Hammond during the public hearing, will involve the investment of substantial additional resources into this property. There is no intent to stifle Fourwinds' ability to earn a profitable return from its investment nor is intended that Fourwinds' marina development should be hampered, however, based upon a comparison of rates for similar facilities, the hearing officer is unable to recommend approval of Fourwinds' petition to increase rates for 2010. It is the hearing officer's opinion, based upon the foregoing analysis, that Fourwinds' proposed 2010 rates will in most cases exceed the fair market rates being charged by marinas operating and maintaining comparable facilities and providing similar amenities.

**B. Proposal**

Consideration of all available information indicates that the rate increase sought by Fourwinds should be denied in its entirety. The hearing officer proposes that the Commission recommend to the U.S. Army Corps of Engineers that Fourwinds' requested increase in rates be denied and that the current rates recommended for approval by the Commission on September 28, 2007 and September 16, 2008 and accepted by the U.S. Corps of Engineers be retained.

Dated: July 31, 2009

---

Sandra L. Jensen  
Hearing Officer

**Service List:**

cc: Gary Miller, DNR, Division of State Parks and Reservoirs  
Jeffrey Hammond, Fourwinds Resort and Marina

To: Sandra Jensen  
Hearing Officer

FILED

JUN 29 2009

NATURAL RESOURCES COMMISSION  
DIVISION OF HEARINGS

Subject: Fourwinds Marina TE1 Rate request

Comments:

In 2008 there was a rate increase of 5%, then in 2009 an adjustment was made and fees returned to the 2007 rate; the proposed rates for 2010-2011 would be a 10% increase (starting from their letter port to each boat/slip renter.)

Due to the local and national economic conditions any request for a 2010-2011 rate increase should be denied.

Example: H Dock - Slip 7

	2007	2008	2009	2010-2011
<sup>1</sup> Paid	5,231.20	5492.76	5231.62	5767.40

Thank you.

Fourwinds Dock Renter,

B. Warren



AGENDA ITEM #10

Slip Length	C/U	V/S	Proposed Rate	Current Rate	% Increase	Proposed \$	Wabago Marina **	Sturgeon Cove Marina **	Proctor Lake Marina **	Hecker Hill Marina **	Kerr's Harbor Marina **	Jayhawk Marina **	Oriskany Marina **	Sta Ann
							Wabago, IL	Plover Branch, GA	Bedford, IN	Carmel, IN	Liberty, IN	Hillside Lake, IL	New Berlin, MI	
18	C	S	\$ 1,276.50	\$ 1,215.81	5.00%	\$ 60.79	70.9222							
20	O	S	\$ 1,192.24	\$ 1,135.47	5.00%	\$ 56.77	59.6120							
20	O	S	\$ 1,215.40	\$ 1,157.52	5.00%	\$ 57.88	60.7700							
20	C	S	\$ 1,647.78	\$ 1,569.31	5.00%	\$ 78.47	82.3890							
20	C	S	\$ 1,647.78	\$ 1,569.31	5.00%	\$ 78.47	82.3890							
24	C	S	\$ 2,142.67	\$ 2,040.64	5.00%	\$ 102.03	89.2779							
24	C	S	\$ 2,298.93	\$ 2,189.46	5.00%	\$ 109.47	88.4204							
24	O	F	\$ 2,080.81	\$ 1,981.72	5.00%	\$ 99.09	86.7004							
24	O	F	\$ 2,121.21	\$ 2,020.20	5.00%	\$ 101.01	88.3858							
24	C	F	\$ 2,922.50	\$ 2,811.90	5.00%	\$ 110.60	123.0208							
26	O	F	\$ 2,255.15	\$ 2,147.76	5.00%	\$ 107.39	86.7355	Nov-Nov	\$ 1,613.00					
26	O	F	\$ 2,298.93	\$ 2,189.46	5.00%	\$ 109.47	88.4204	Nov-Nov	\$ 1,595.00					
26	C	F	\$ 3,193.38	\$ 3,041.22	5.00%	\$ 152.16	122.8195							
28	O	F	\$ 3,562.65	\$ 3,440.62	5.00%	\$ 122.03	91.5232							
30	C	F	\$ 4,118.50	\$ 3,923.32	5.00%	\$ 195.17	137.3157							
30	C	F	\$ 4,118.50	\$ 3,923.32	5.00%	\$ 195.17	137.3157							
32	O	F	\$ 4,900.30	\$ 4,765.76	5.00%	\$ 134.54	80.6351							
32	C	F	\$ 5,709.25	\$ 5,532.62	5.00%	\$ 176.63	115.9741							
36	O	F	\$ 3,507.84	\$ 3,350.42	5.00%	\$ 157.42	91.8872							
36	O	F	\$ 3,525.80	\$ 3,357.90	5.00%	\$ 167.90	97.9389							
36	O	F	\$ 3,743.65	\$ 3,565.38	5.00%	\$ 178.27	103.9953							
36	O	F	\$ 3,967.24	\$ 3,778.32	5.00%	\$ 188.92	110.2011							
36	C	F	\$ 4,943.39	\$ 4,707.99	5.00%	\$ 235.40	137.3164							
42	O	F	\$ 3,726.45	\$ 3,540.00	5.00%	\$ 186.45	86.7350							
42	O	F	\$ 4,030.30	\$ 3,838.38	5.00%	\$ 191.92	95.9595							
42	C	F	\$ 4,608.73	\$ 4,389.27	5.00%	\$ 219.46	109.7317							
42	C	F	\$ 5,767.40	\$ 5,492.76	5.00%	\$ 274.64	137.3190							
46	O	F	\$ 3,984.44	\$ 3,794.70	5.00%	\$ 189.74	86.5283							
46	O	F	\$ 4,282.55	\$ 4,078.62	5.00%	\$ 203.93	93.0989							
46	O	F	\$ 4,282.55	\$ 4,078.62	5.00%	\$ 203.93	93.0989							
46	O	F	\$ 4,282.55	\$ 4,078.62	5.00%	\$ 203.93	93.0989							
46	O	F	\$ 4,282.55	\$ 4,078.62	5.00%	\$ 203.93	93.0989							
48	C	F	\$ 4,592.13	\$ 4,373.46	5.00%	\$ 218.67	99.8289							
50	O	F	\$ 4,488.94	\$ 4,275.18	5.00%	\$ 213.76	89.7788							
50	O	F	\$ 4,488.94	\$ 4,275.18	5.00%	\$ 213.76	89.7788							
54	C	F	\$ 4,987.21	\$ 4,750.20	5.00%	\$ 237.01	131.1976							
60	O	F	\$ 5,985.25	\$ 5,700.24	5.00%	\$ 285.01	99.7542							
72 50*	C	F	\$ 9,886.28	\$ 9,415.88	5.00%	\$ 470.40	137.3164							
76	O	F	\$ 7,681.08	\$ 7,315.31	5.00%	\$ 365.77	101.0658							
90 50*	C	F	\$ 12,358.47	\$ 11,769.87	5.00%	\$ 588.60	127.3150							
ET 90*	O	F	\$ 716.63	\$ 682.50	5.00%	\$ 34.13								

\* Note that the 72' SuperDeck slip also includes a 10x12 covered private patio and the 90' Super Deck slip includes a 10x15 covered private patio. Both patios are across the main walkway and outside the slip itself.

\*\* Also note that all rates for other marinas are for the 2009 boating season and do not reflect the increases anticipated for 2010.



## AGENDA ITEM #10

[illegible]

[illegible]

**AGENDA ITEM #10**

**AGENDA ITEM #10**